IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
SECOND APPEAL NO.46 OF 2006

Sadashiv Gopal Gosavi ...Appellant
Vs.
Sharad Gopal Gosavi & Others ...Respondents

WITH
SECOND APPEAL NO.47 OF 2006

Sadashiv Gopal Gosavi ...Appellant
Vs.
Nandkumar S. Bhagat and another ...Respondents

Mr.C.S.Joshi for the Appellant
None for the Respondents.

CORAM: A.S.OKA, J.
DATED: APRIL 7,2006.

P.C.:

1. Heard Shri Joshi for the Appellants. In both the Second Appeals the Appellants are the Plaintiffs. The suits filed by the Appellants have been dismissed by the Courts below mainly on the ground of non-joinder of the necessary parties.

2. Shri Joshi on behalf of the Appellants submitted that considering the nature of the prayers made in both the suits it was not at all necessary for the Plaintiffs to implead all the members of the family of the deceased Gopal Ramchandra Gosavi. He submitted that the view expressed by the Courts below is completely erroneous.

3. I have considered the submissions. R.C.S.No.16 of 1988 has been filed by the Appellants praying for declaration that the Appellant-original Plaintiff No.1 had one-fifth share in

the suit property. The Appellant is the son of one Gopal Ramchandra Gosavi who had five sons viz.Sadashiv, Mahadeo, Sharad, Ashok and Narayan (since deceased). The wife of Gopal is also dead. In paragraph 4 of the plaint there is an averment that the suit property is a joint family property. It is obvious from the cause title of the plaint that all the persons who will be entitled to claim share in the joint family property have not been impleaded as parties to the suit.

4. R.C.S.No.42 of 1991 has been filed by the Appellant and one Sunil Gosavi whose name of was later on deleted. The prayer in the suit is for declaration that the deed of gift executed by the Defendant No.2 in favour of the Defendant No.1 is not binding on the Plaintiff. The second prayer is that the Defendant No.1 should be restrained from interfering with two fifth undivided share of the Appellant Sadashiv. Even in this suit the averment is that the suit property is the property of joint Hindu family. All the persons who are entitled to claim share in the property are not impleaded even in the said suit.

5. In view of this factual position, no fault can be found with the finding of the Courts below that the suits were not maintainable on account of non-joinder of the necessary parties. Accordingly, both the Appeals are dismissed with no order as to costs.

Judge.